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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,293	12/31/2003	Sangeeta N. Bhatia	36796-502C01US	9194
35437 7590 01/28/2010 MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO ONE FINANCIAL CENTER BOSTON, MA 02111				
EXAMINER TENTON, LEO B				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
01/28/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,293

Applicant(s)

BHATIA ET AL.

Examiner

Leo B. Tentoni

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30, 31, 34, 38-46, 48, 49 and 53-66 is/are pending in the application.
- 4a) Of the above claim(s) 39-44 and 54-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30, 31, 34, 38, 45, 46, 48, 49, 53 and 60-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09 November 2009 has been entered.

Election/Restrictions

2. Claims 39-44 and 54-59 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 20 April 2007.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a),

the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 30, 31, 34, 38, 45, 46, 48, 49, 53, 60 and 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss et al (U.S. Patent 6,143,293 A) in combination with Ma (U.S. Patent 6,872,387 B1).

Weiss et al (see the entire document, in particular, col. 1, line 15 to col. 2, line 18; col. 4, line 39 to col. 5, line 8; col. 6, lines 1-51; col. 8, line 12 to col. 9, line 46) teaches a polymer scaffold including two or more assembled polymer membranes, wherein each membrane has a surface with varying topology including at least one feature with at least one dimension of about 25 to 250 microns. Weiss et al teaches that the scaffold is made of a polymer material, but does not teach that the polymer material is a hydrogel or a biopolymer hydrogel. Ma (see the entire document, in particular, col. 1, lines 54-58; col. 4, lines 26-35) teaches a polymer scaffold made of hydrogel polymer, and such would have been obvious to one of ordinary skill in the art at the time the invention was made in Weiss et

al in view of Ma principally in order to provide a polymer scaffold for cell growth.

6. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss et al (U.S. Patent 6,143,293 A) in combination with Ma (U.S. Patent 6,872,387 B1) as applied to claims 30, 31, 34, 38, 45, 46, 48, 49, 53, 60 and 63-66 above, and further in view of Masini et al (U.S. Patent Application Publication 2001/0043918 A1).

Weiss et al teaches a polymer scaffold including two or more assembled polymer membranes, but does not teach that the polymer membrane is a mesh. Masini et al (see the entire document, in particular, paragraphs [0027] - [0029] and [0086]) teaches a polymer scaffold including a membrane which may be a mesh, and such would have been obvious to one of ordinary skill in the art at the time the invention was made in Weiss et al in view of Masini et al principally in order to provide a desired polymer scaffold.

Response to Arguments

7. Applicant's arguments filed on 09 November 2009 have been fully considered but they are not persuasive.

8. Applicant argues (page 8) that one of ordinary skill in the art at the time the invention was made would not have modified Weiss et al in view of Ma. Examiner responds that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Weiss et al in view of Ma

principally in order to provide a polymer scaffold for cell growth.

9. Applicant argues (page 8) that one of ordinary skill in the art would not have thought it feasible to layer or fuse thin hydrogel membranes that contain 10 to 100 micron features. Examiner responds that one of ordinary skill in the art would have thought it feasible to layer or fuse thin hydrogel membranes that contain 10 to 100 micron features because Weiss et al teaches assembling membranes to form a scaffold.

10. Applicant argues (pages 8 and 9) that the maintenance of the obviousness rejection would necessarily entail hindsight reconstruction, impermissibly using Applicants' own specification as a blueprint to piece together the prior art. Examiner responds that hindsight reconstruction has not been used because all of the claimed elements were known in the prior art and one of ordinary skill in the art at the time the invention was made could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time the invention was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo B. Tentoni whose telephone number is (571) 272-1209. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leo B. Tentoni/
Primary Examiner, Art Unit 1791